

APPROVED MINUTES*
SUNNYVALE CITY COUNCIL
TUESDAY, JUNE 9, 2009

5:30 P.M. SPECIAL COUNCIL MEETING (Closed Session)

Closed Session pursuant to Government Code Section 54956.8 – Conference with Real Property Negotiator

Property: Sunnyvale Town Center

Negotiating Parties: City Manager Gary Luebbbers, Agency Director; Peter Pau and Ashley Powell, Sunnyvale Mixed Use LLC

Under Negotiation: Terms of ARDDOPA

6 P.M. SPECIAL COUNCIL MEETING (Closed Session)

Closed Session pursuant to Government Code Section 54987.6 - Conference with Labor Negotiator

Negotiator: Erwin Young, Director of Human Resources;

Employee Organizations:

Sunnyvale Managers Association (SMA)

Service Employees International Union (SEIU) Local 715 (part-time employees)

Sunnyvale Employees Association (SEA)

Sunnyvale Public Safety Officers Association (PSOA)

Sunnyvale Communication Association (COA)

7 P.M. COUNCIL MEETING

SALUTE TO THE FLAG

Mayor Spitaleri led the salute to the flag.

ROLL CALL

PRESENT:

Mayor Anthony Spitaleri
Vice Mayor Christopher Moylan
Councilmember John Howe
Councilmember Ron Swegles
Councilmember Melinda Hamilton
Councilmember David Whittum
Councilmember Dean Chu

ABSENT:

None

**Approved by Council July 14, 2009*

STAFF PRESENT:

City Manager Gary Luebbers
Assistant City Manager Robert Walker
City Attorney David Kahn
Transportation and Traffic Manager Jack Witthaus
Planning Officer Trudi Ryan
Superintendent of Field Services Jim Craig
Director of Public Works Marvin Rose
Communications Officer John Pilger
City Clerk Kathleen Franco Simmons

SPECIAL ORDERS OF THE DAY

- Green Business Recognition
- Resolution of Recognition in Memory of Colonel Michael V. Krueger, USA

CLOSED SESSION REPORTS FOR JUNE 9, 2009

Vice Mayor Moylan reported Council held two closed sessions earlier this evening regarding Conference with Real Property Negotiator, the city manager and city attorney, pursuant to Government Code Section 54956.8 - re: Sunnyvale Town Center, and Conference with Labor Negotiator, Director of Human Resources, pursuant to Government Code Section 54987.6.

Vice Mayor Moylan reported direction was given, but no action was taken.

PUBLIC ANNOUNCEMENTS

Councilmember Howe requested a moment of silence to honor numerous children who were victims of a tragic fire in Mexico. Mayor Spitaleri called for a moment of silence.

Councilmember Whittum announced Sunnyvale's American Legion Post 344 upcoming 80th anniversary picnic.

Councilmember Howe stated the 2009 Sunnyvale Art and Wine Festival was a success and announced the upcoming Summer Music Series on Murphy Street.

Councilmember Swegles announced the "Dinner at the Dump" event which benefits Sunnyvale Community Services, Leadership Sunnyvale, and the Rotary Club of Sunnyvale.

CONSENT CALENDAR

Councilmember Whittum pulled Item I.F. from the Consent Calendar.

Vice Mayor Moylan moved and Councilmember Hamilton seconded approval of the Consent Calendar with the exception of Item 1.F.

Councilmember Whittum explained that his vote on the Consent Calendar does not include Item 1.H as his home is located in the affected area.

VOTE: 7-0 (Vote does not include Item 1.F. or Item 1.H.)

Councilmember Whittum requested to move discussion on Item I.F. to the end of the Council Meeting. Mayor Spitaleri requested Councilmember Whittum discuss Item I.F. at the present time.

1.A Approval of Council Meeting Minutes of May 12, 2009

1.B Approval of Information/Action Items – Council Directions to Staff

Fiscal Items

1.C RTC 09-153 Lists of Claims and Bills Approved for Payment by the City Manager – List Nos. 455 and 456

Staff Recommendation: Council review the attached lists of bills.

1.D RTC 09-155 Transmittal of FY 2006/2007 Performance Results Audit for Program 115 — Transportation and Traffic Services Staff Recommendation:

Staff Recommendation: Alternative 1, receive the audit report and concur with management's acceptance of recommendations.

Personnel

**1.E RESOLUTION Amendment to the Salary Resolution - Military Reservist Extension of Benefits and Supplemental Salary
RTC 09-152**

Staff Recommendation: Alternative #1: Adopt a Resolution to extend benefits and supplemental salary until the expiration of Executive Order 13223 or until such time as Council takes action to amend or discontinue such benefits and supplemental pay. The extension will be funded by carrying over the remaining unspent Military Leave Budget from the current fiscal year to the next fiscal year each year the extension is in place, and appropriating salary savings in the operating programs where the reservists are budgeted, if necessary. The current FY 2008/2009 Military Reservist Leave Budget available for carryover to FY 2009/2010 is estimated to be \$267,889.

Contracts

- 1.F RESOLUTION Approve by Resolution a New 25-year Water Service Agreement
RTC 09-154 (WSA) Between the Bay Area Water Supply and Conservation
Agency (BAWSCA) and the City and County of San Francisco (San
Francisco), and a New 25-year Water Sales Contract between the
City of Sunnyvale and San Francisco**

Councilmember Whittum questioned staff regarding the Environmental Impact Report (EIR) report related to this item. Councilmember Whittum verified with staff that this item would need to be approved by the end of June 2009. Councilmember Whittum suggested staff send a utility mailer to residents which would explain the significant impacts by adoption of the overriding considerations of this agreement. Councilmember Whittum stated that residents may voluntarily conserve water if they better understood the impacts of this agreement. Superintendent of Field Services Jim Craig responded that Council is not being asked to approve the EIR report as it has already been approved and adopted.

Director of Public Works Marvin Rose explained for the purposes of the California Environmental Quality Act (CEQA), Council would need to make the finding that approval of this agreement will not have any environmental impacts, as part Alternative 1.

Councilmember Whittum requested clarification on what he is being asked to approve and requested staff inform the City's water users as to the impacts from their water usage as a means to encourage voluntary conservation.

Councilmember Howe verified with Superintendent Craig that out of 27 agencies, 12 cities so far have approved this agreement.

Public comments opened at 7:24 p.m.

No speakers

Public comments closed at 7:24 p.m.

MOTION: Councilmember Howe moved and Councilmember Swegles seconded to approve Alternative 1: Council approves three resolutions:

1. Resolution adopting findings for purposes of the California Environmental Quality Act (CEQA) in connection with approval of a water supply agreement with the City and County of San Francisco.
2. Resolution approving a water supply agreement with the City and County of San Francisco.
3. Resolution approving a water sales contract with the City and County of San Francisco.

Councilmember Whittum requested an amendment to have utility mailers included with the water bills as to what the significant impacts will be to areas where water would be drawn.

Amendment failed for lack of second.

Councilmember Swegles explained the Bay Area Water Supply and Conservation Agency (BAWSCA) Water Board will be voting on this agreement soon. Councilmember Swegles stated the executive boards of all the surrounding cities are agreeable to the overall water service agreement.

Councilmember Howe acknowledged that the water service agreement has been accepted so far by 12 out of 27 cities, and stated that in the end it is possible that all 27 cities will be in full support. The City and County of San Francisco will be required to perform an environmental impact report (EIR) dealing with the environment as best as possible. Councilmember Howe stated there is not really any choice in this matter as half of the area's water comes from this supplier.

Councilmember Whittum stated he will not support this motion because although he is ultimately in favor of approving this agreement, part of CEQA is to involve the public and that is what he would like to see happen. Councilmember Whittum stated if water users were informed of the water issues, many of them would voluntarily conserve water and that would help to avoid mandatory conservation.

VOTE: 6-1 (Councilmember Whittum dissented)

Other Items

- 1.G ORDINANCE Adoption of Ordinance No. 2897-09 Designating Alturas Avenue as a Preferential Parking Zone for the Benefit of Residents Adjacent Thereto**

Staff Recommendation: Approve the second reading of Ordinance No. 2897-09

- 1.H ORDINANCE Adoption of Ordinance No. 2898-09 Designating Certain Streets in the Area of the Caltrain Station as Preferential Parking Zones for the Benefit of Residents Adjacent Thereto**

Councilmember Whittum stated that he will recuse himself from voting on this item as his home is located in the affected area.

Staff Recommendation: Approve the second reading of Ordinance No. 2898-09

VOTE: 6-0 (Councilmember Whittum recused)

- 1.I ORDINANCE Adoption of Ordinance No. 2899-09 Amending Certain Sections of Chapter 10.56 (Bicycles) of Title 10 (Vehicles And Traffic) of the Sunnyvale Municipal Code Updating the Code Related to Bicycles**

Staff Recommendation: Approve the second reading of Ordinance No. 2899-09

STAFF RESPONSES TO PRIOR PUBLIC COMMENTS

None.

PUBLIC COMMENTS

None.

PUBLIC HEARINGS/GENERAL BUSINESS

2. RTC 09-129 Site Access and Cut through Traffic Analysis for the Kaiser Permanente Santa Clara Medical Center Facility – Study Issue

Transportation and Traffic Manager Jack Witthaus provided the staff report.

Councilmember Whittum discussed traffic conditions within the study with Manager Witthaus.

Councilmember Whittum verified with Manager Witthaus that the study was due to be concluded in December 2008 assuming the funding had been received; however, the funding was not received at that time which delayed the study,

Councilmember Howe verified with Manager Witthaus that the City of Sunnyvale controls the median and the City of Santa Clara runs the traffic light. The City of Sunnyvale pays for a portion of the electrical cost because the traffic light is physically between the two cities.

Councilmember Howe verified with Manager Witthaus the City has the ability to either not allow a left-hand turn into the Kaiser facility or allow a left-hand turn at a later date.

Councilmember Hamilton questioned why a traffic light was installed at the current spot where there is just a driveway going out of Kaiser. Manager Witthaus explained the City of Santa Clara made a determination that there would be a certain volume of traffic at that location which warranted installation of a traffic signal.

Councilmember Hamilton inquired about the accurateness of the first traffic study versus the current traffic study and Manager Witthaus explained the traffic study done at the time of approval were based on projections as to what type of traffic the facility would generate. The current study is more accurate as it is based on actual field studies.

Councilmember Hamilton verified with Manager Witthaus that the time of study was from 10 a.m. to 4 p.m. which was based on the time periods that generate the most traffic from the facility.

Councilmember Swegles verified with Manager Witthaus that a time study was not done for the other exit onto Lawrence Expressway. Councilmember Swegles stated he tried using this exit and it seemed to be a quick way to exit.

Public hearing opened at 7:44 p.m.

Mayor Spitaleri called for the applicant to speak.

Senior Vice President and Area Manager for Santa Clara Kaiser Permanente Medical Center Mary Ann Barnes requested Council support the staff recommendation to accept the traffic study and approve a left-hand turn lane out of the medical center. Barnes explained that the facility serves a high percentage of Sunnyvale residents and Kaiser's objective is to provide citizens with a safe exit. Barnes explained that the current situation causes unsafe exiting via u-turns onto Lawrence Expressway. Allowing the left-hand turn lane will not cause traffic to cut through neighborhoods to the north of the Kaiser Medical Facility and would slightly improve the traffic circulation in the intersection. In response to concerns over expansion of the medical campus, Barnes explained there are no current plans to build out a large medical office building due to the economy. Barnes submitted to Council approximately 200 cards from Sunnyvale Kaiser clients and citizens in support of the left turn lane.

Vice Mayor Moylan inquired as to the amount of members from the City of Santa Clara and the City of Cupertino. Barnes explained there are approximately 80,000 from the City of Santa Clara and roughly 25,000 to 30,000 from the City of Cupertino, similar to the City of Sunnyvale.

Councilmember Swegles inquired why a drivable condition was not installed at Forge Drive and Barnes explained that the back side of the campus was a staging area for the hospital and medical center while they were being built. Additionally, large construction vehicles used that area when building the Cancer Treatment Center and at the time, the area was not deemed safe for exiting purposes. The area is currently being used because remodeling of the campus continues. Councilmember Swegles stated he used that area to exit at different times of the day, on numerous occasions, and had no issues with the construction.

Councilmember Swegles and Barnes discussed entrances at the facility. Councilmember Swegles verified with Barnes that there is another viable exit from the facility onto Lawrence.

Councilmember Howe verified with Barnes the medical facility currently covers approximately one and a half million square feet. Councilmember Howe inquired as to what the entitlements are for the site from the City of Santa Clara and what Kaiser will be asking the City of Santa Clara to allow in the future during their present negotiations with the City. Area Finance Manager for Kaiser, Jerry Yu, stated that approximately 10 years ago, an additional 80,000 square feet was approved for a medical office building. Councilmember Howe verified that Kaiser has built out over 90 percent by current entitlements.

Vice Mayor Moylan verified most of the construction on Forge Drive has been completed, with the exception of construction of the psychiatric health facility, which will break ground later this year and conclude the end of next year. Vice Mayor Moylan concluded that at the end of construction, Kaiser will be able to allow an exiting in that area. Vice Mayor Moylan questioned if Kaiser would object to a condition being added to allow exiting at that area upon completion of construction. Barnes stated she would have concerns over that and would not be able to agree to that condition.

Councilmember Howe left dais at 7:57 p.m.

Councilmember Hamilton verified with Barnes that Kaiser will not be asking the City of Cupertino to allow a left-hand turn at Swallow Drive.

Councilmember Howe returned to the dais at 8:00 p.m.

Jerry Yu, citizen of Sunnyvale and Area Finance Manager for Kaiser, spoke of his concerns over making a u-turn when he leaves work. Yu requested Council approve a left-hand turn lane.

Ann Pattee stated she supports Council's approval of a left-hand turn out of the Kaiser facility onto Homestead Road.

Wally Evans stated an additional concern exists, but has not been talked about, which is the safety and risk factors of those residents who live in the Bird Streets because the ambulance stationed at Kaiser cannot make a left-hand turn to respond within one to two minutes. Evans urged Council to remove this medical emergency barrier by approving the left-hand turn lane.

Steve Harms spoke in support of Council approving a left-hand turn out of Kaiser. Harms requested the audience raise their hands if they are in favor of the left-hand turn and show their support to Council.

Donald Schulz spoke in support of a left-hand turn lane and highlighted that the study identified that drivers will not be driving through the Birdland Neighborhood. Schulz spoke of the unsafe issues that have been created by the inability to make a left-hand turn.

Bob Stout spoke in support of a left-hand turn at Kaiser.

Sheila Jones declined the opportunity to offer comments.

Russ Perry and Vernon Hudnut spoke in favor of the left-hand turn.

Joan Gans spoke against allowing a left-hand turn as the additional traffic will affect her neighborhood. Gans requested a meeting be held with the residents of Birdland in order to find a compromise.

Mary Ann Barnes declined the opportunity to offer comments.

David Newswanger, employee of Kaiser, stated his support for a left-hand turn. Newswanger stated it is impracticable to use the Lawrence exit due to high traffic.

Ken Jorgensen spoke against a left-hand turn

John Sheehan and Susan Lange spoke in support of a left-hand turn into Kaiser

Barry MacKinnon stated he lives in Birdland and is concerned over cut through traffic using his neighborhood; however, he does support a left-hand turn lane. MacKinnon also supported developing the Forge Drive exit as soon as possible. MacKinnon stated a change should be made to the existing Homestead/Quail exit in order to reduce impulse cut through traffic into Birdland. MacKinnon requested other traffic calming methods be used in Birdland.

Jim Brokaw, employee of Kaiser and Birdland resident, stated he does not understand the concern over cut through traffic using the Birdland neighborhood as it would not save time for the driver. Brokaw spoke in support of a left-hand turn. Brokaw explained that using the Forge Drive as an exit may have some unintended consequences.

Karen Casner explained that offering the most number of exits at this facility is the ideal situation and offered her support for the left-hand turn.

Steve Blanc did not respond when called to comment.

Bridget Bouyssounouse, Kaiser employee, stated her support for a left-hand turn.

Tap Merrick stated he understands the current inconvenience of the exit; however, Kaiser made a previous agreement to have an exit at Forge Drive and that should happen. Merrick explained u-turns do not need to be made. Merrick stated Kaiser is attempting to get what they want by manipulating Council. Merrick stated the traffic study was clearly not a fair study and offered Council copies of the errors made in the study. Merrick explained that many residents are against this left-hand turn.

Vice Mayor Moylan disclosed he met with Merrick previously. Vice Mayor Moylan stated that roughly 10 percent of the Sunnyvale Kaiser members residing in the eastern corridor might want to use Birdland as a cut through; however, not allowing the left-hand turn creates an issue for 90 percent of the other members. Vice Mayor Moylan inquired if there is an alternative way to calm the traffic going into Birdland without creating an issue for the large number that are being affected by not having a left-hand turn lane. Merrick stated he is not opposed to adding a light at Swallow as long as it is limited to left and right turns only and stated he is also in favor of opening Forge Drive.

Peter Tobias stated it is difficult to get to the Forge Drive exit and once you reach it, it is an uncontrolled exit. Tobias requested Council approve the left-hand turn.

Eugene Garcia expressed his support for the left-hand turn and explained that should issues arise, the turn lane can always be changed back.

Dawn Cameron stated she is a consultant and transportation planner for the County of Santa Clara Roads and Airports Department. Cameron offered support for the left-hand turn onto Westbound Homestead Road. Cameron spoke of traffic issues at the Lawrence/Homestead intersection.

Councilmember Swegles inquired if Cameron studied the exits to the south, which are underutilized, or the Forge Drive exit. Cameron stated she had not studied those exits. Cameron explained the department studied this situation as to whether traffic can be kept moving along Lawrence Expressway as they are very concerned about the current situation.

Councilmember Whittum inquired if Cameron had witnessed any other sites, as large as Kaiser, with only two exits. Cameron responded there are sites along the expressway with very few exits and all of them are very troublesome spots. Cameron explained that the County of Santa Clara does not have any land use authority over decisions that are made. When a land use development proposal comes before a city, the county will make comments back to the cities on the potential impacts on the expressway and request mitigation for the traffic impacts.

Councilmember Whittum stated there are four additional exits for this site that are not being used and questioned Cameron if it would be better for traffic flow to have more exits. Cameron responded that would depend on where the drivers are coming from as well as their destinations.

Councilmember Howe inquired if the exit from Lawrence Expressway directly into Kaiser was approved by the County of Santa Clara. Cameron explained that the county does have to grant permit and access permission off the expressway into land use developments. Councilmember Howe responded the county having permission granting authority is very close to land use authority.

Douglas Daetz stated his support for a left-hand turn and urged Council to approve the staff recommendation.

Carmel and Tim Couture of the Birdland neighborhood, spoke of traffic concerns in the area. Couture requested that if the left-hand turn is allowed onto Homestead, then Swallow should be a dead end street at Homestead.

Councilmember Swegles verified with Couture that she spoke to residents who live on Swallow. Couture explained that the residents on Swallow that she spoke to are in agreement with closing Swallow.

Werner Gans stated although he cannot prove it, his concern is that approval of the left-hand turn lane will significantly cause cut through traffic into the Birdland neighborhood. Gans stated the report is full of errors and offered examples of what items were left out of the report. Gans stated he submitted a plan but was told it would not work. Gans requested that staff explain to him what would be needed to make it work as it is an opportunity to have a winning solution. Gans stated the City of Cupertino protects those who live on Peacock by blocking off a left turn out of the HP plant and City of Santa Clara blocks any entrance out of Leigh High into Kaiser. Residents in Birdland are asking for continued protection from the City out of Kaiser into their neighborhood.

Kin Gee stated he is opposed to the left-hand turn as proposed by Kaiser. Gee stated that the current inconvenience to Kaiser members is not a compelling reason to put in a left-hand turn, which would in turn negatively affect the surrounding neighborhood.

Kevin Park stated he is not opposed to a left-hand turn onto Homestead; however, the issue should not be just about turning left, but also about being a good neighbor. Park expressed concerns about Kaiser.

Peter Cirigliano offered support for the left-hand turn lane and stated it will also benefit the Birdland residents because it will allow for easy access back to their residences.

Mayor Spitaleri called for the applicant to return.

Councilmember Chu inquired as to Kaiser's thoughts about allowing the left-hand turn with restrictions so that a right-hand turn could not be made onto Swallow or other streets, listed as option 5 in the staff report. Barnes stated she has not had time to take a look at this option but would defer to the professionals who did the traffic study and follow their recommendations as they are the experts.

Councilmember Chu verified with Barnes that she would object to development of Forge Drive as an exit due to current and future construction. Barnes stated that additionally, she does not feel that using Forge as an exit would solve the left-hand turn issues nor satisfy those members who would still want a left-hand turn lane.

Barnes concluded her comments by expressing Kaiser's support for a left-hand turn lane.

Public Hearing closed at 9:15 p.m.

Councilmember Howe verified with Manager Witthaus that Kaiser does have some access rights to Forge Drive, however, he is not aware of how Forge Drive relates to development conditions of approval or the development agreement.

Councilmember Howe verified with Manager Witthaus that the previous approval of the Environmental Impact Report (EIR) required an exit from Kaiser through Forge Drive.

Councilmember Howe asked the applicant, Barnes, if the Birdland area is serviced by an ambulance which originates at Kaiser. Barnes responded that an ambulance is not housed at the Kaiser campus.

Councilmember Hamilton disclosed she had a discussion with a resident of Birdland.

Councilmember Hamilton explained the traffic report included in Alternative 5, specifically calls for use of the median or the left pocket lane; however, her understanding was that the median would not be used but that one of the westbound traffic lanes on Homestead would be used. Manager Witthaus explained staff assumed use of the median would be retained and the third lane would be an exclusive lane for Kaiser traffic because Homestead carries a certain amount of cars currently and staff viewed that capacity would still be necessary.

Councilmember Hamilton verified with Manager Witthaus that the option of an unorthodox banning of turns for a channelized through-lane would create a fairly significant safety issue.

MOTION: Councilmember Howe moved, and Councilmember Swegles seconded to approve:

- Council approves adding a left-hand turn lane at the Kaiser facility for two years and then the item shall return to Council for a decision on formal approval.
- Kaiser to put in the Forge Drive exit, including paving the roadway and placing signs that are acceptable to the City's traffic engineers in order that the exit may be considered to be a viable alternative to using other exits.
- Installation of the Forge Drive and left-hand turn lane to be paid for by the City of Santa Clara and Kaiser.
- Two years after installation, City of Sunnyvale to review the left-hand turn and will have the option to remove it if causing traffic issues. Staff to monitor traffic levels in Birdland and report back to Council during their two year review.

Mayor Spitaleri questioned Councilmember Howe as to what the specific time period is included in the motion for Kaiser to open the Forge Drive exit and Councilmember Howe responded that Kaiser needs to come up with a plan soon as the exit was previously agreed upon to be installed as part of the EIR report. The City should not have to wait two to three years. Mayor Spitaleri asked Councilmember Howe if he would grant an extension to Kaiser if they could demonstrate that they needed additional time due to the economic conditions delaying their building plans. Councilmember Howe responded that he would amend his motion to allow Kaiser to install the left-hand turn lane thirty days after they put in the Forge Drive exit. Councilmember Howe stated if Forge Drive is not opened, there will be additional stress added to the left-hand turn which could ultimately close the left-hand turn.

Councilmember Howe stated he would agree to have Kaiser at the very least come up with a plan for paving Forge Drive and adding signage by the time the two year review is in place.

Restated MOTION: Councilmember Howe moved, and Councilmember Swegles seconded to approve:

- Council approves adding a left-hand turn lane at the Kaiser facility for two years and then the item shall return to Council for a decision on formal approval. Council at that time will have the option of continuing, stopping, or modifying the turn lane.
- Kaiser, at minimum, to have a plan for the Forge Lane exit, including paving the roadway and placing signs that are acceptable to the City's traffic engineers in order that the exit may be considered to be a viable alternative to using other exits.
- Installation of the Forge Drive exit and left-hand turn lane to be paid for by the City of Santa Clara and Kaiser.
- Notify the City of Santa Clara and Kaiser that the City of Sunnyvale has unilateral decision-making on this intersection. Explain that in two years, Council will review this and may choose to reverse what they approved.
- Two years after installation, City of Sunnyvale is to review the left-hand turn and will have the option to remove it should traffic issues arise. Staff to monitor traffic levels in Birdland and report back to Council during their two-year review.

Councilmember Hamilton verified with City Manager Gary Lubbers that the City of Sunnyvale is not able to compel the City of Santa Clara to pay for this project. Councilmember Howe responded that if Kaiser and the City of Santa Clara do not agree to pay, then approval of the left-hand turn will not move forward.

Councilmember Hamilton verified with Councilmember Howe that when the report comes back to Council with two years of study being completed, the traffic report should state whether the Birdland neighborhood was affected or not.

Councilmember Hamilton offered a friendly amendment to explore the option of having Kaiser pay for traffic calming measures in Birdland if within two years there appears to be an issue in the neighborhood. Councilmember Howe responded that Kaiser may choose to mitigate any potential calming methods needed before the end of the two year study. Should those efforts appear to successfully mitigate issues, the Council at the time the two year period is over may consider the traffic calming efforts that were made by Kaiser.

Councilmember Swegles stated Forge Drive needs to be leveled and have the ability to drive on it, but it does not necessarily need to be paved. Councilmember Howe stated allowing for the road to be driven on is sufficient for the short term; however, the motion requires that Kaiser return with a more permanent plan.

Councilmember Whittum stated he opposes the motion because of traffic concerns with the neighborhood to the north. Quality of life for residents of the neighborhood is more important than convenience of drivers. Councilmember Whittum stated the other concern is the development itself. In order to be able to work with Kaiser, they must have a sincere interest in solving issues. Councilmember Whittum stated the City is responsible for whatever solution is achieved and Kaiser should be responsible for their planning.

Councilmember Whittum stated he would like to move forward if a relationship with Kaiser can be formed. Councilmember Whittum stated he would like to see Forge Drive opened, which should take about 10 days, and then meet with Kaiser afterwards.

Councilmember Chu stated he will support the motion. Councilmember Chu explained that the motion offers a good compromise because the proposed traffic study will determine if there is an increase in traffic, which is the only way to solve the Birdland neighborhood concerns. Councilmember Chu stated funds should be set aside for possible mitigation efforts, whether through rejection of the left turn in two years or some type of traffic calming within the Birdland neighborhood. Councilmember Chu stated the actual traffic generator in the neighborhood is the school and potential developments within the area.

Vice Mayor Moylan verified with Manager Witthaus that adding the left-hand turn lane will cost approximately \$15,000 to \$20,000.

Vice Mayor Moylan verified with Manager Witthaus that the Birdland neighborhood has been studied several times and Council recently approved traffic calming insulation for the neighborhood.

Vice Mayor Moylan asked Councilmember Howe if he would agree to not include making the City of Santa Clara and Kaiser pay for the light. Vice Mayor Moylan stated if there is a delay in funding, that will continue to leave numerous Sunnyvale citizens waiting for a solution on how to safely exit from Kaiser.

Councilmember Howe stated it is not just the modification of the traffic light but also includes having a plan to make Forge Drive a viable exit. Councilmember Howe verified with Manager Witthaus that the cost of doing a traffic study for the Birdland neighborhood in two years would be approximately \$10,000 or less. Councilmember Howe stated the cost of the study plus the cost of the left-hand turn lane is approximately \$25,000.

Councilmember Howe agreed to change his motion to allow the City of Sunnyvale to pay the first \$15,000 of the cost of adding the left-hand turn lane with the remainder to be paid by the City of Santa Clara and Kaiser. The remaining amount needs to be known ahead of time and both parties need to agree to finance the balance.

Councilmember Swegles agreed to the amendment.

Vice Mayor Moylan explained that this issue should be about what is best for Sunnyvale residents and at this point, the current exit presents an unsafe situation. Vice Mayor Moylan stated the previous Council's intention was well-meaning as they attempted to protect the Birdland neighborhood; however, their decision has resulted in bad consequences. Vice Mayor Moylan stated he supports opening up the left-hand turn lane and then reviewing if there are traffic concerns affecting the neighborhood and should that happen, use traffic calming.

Councilmember Hamilton stated everyone who spoke made valid comments regardless if they live in the Birdland neighborhood or not. Councilmember Hamilton stated she would not support the motion if she truly was concerned that allowing the left-hand turn would negatively impact the neighborhood. Should the traffic study show otherwise, Council will address any issues that arise.

Councilmember Hamilton stated she supports the motion because she is concerned over the safety of Sunnyvale residents.

Mayor Spitaleri stated he supports the motion because addressing safety issues in the area is necessary. Mayor Spitaleri offered support for Kaiser and identified that they brought this issue from the members forward, when in fact they could have deferred to the City of Sunnyvale.

Restated MOTION: Councilmember Howe moved, and Councilmember Swegles seconded to approve:

- Council approves adding a left-hand turn lane at the Kaiser facility for two years and then the item shall return to Council for a decision on formal approval. Council at that time will have the option of continuing, stopping, or modifying the turn lane.
- Kaiser, at minimum, to have a plan for the Forge Lane exit, including paving the roadway and placing signs that are acceptable to the City's traffic engineers in order that the exit may be considered to be a viable alternative to using other exits.
- Installation of the Forge Drive exit and left-hand turn lane to be paid for as follows: the City of Sunnyvale to pay the first \$15,000 of the cost of adding the left-hand turn lane with the remainder to be paid by the City of Santa Clara and Kaiser. The remaining amount needs to be known ahead of time and both parties, Kaiser and the City of Santa Clara need to agree to finance the balance.
- Notify the City of Santa Clara and Kaiser that the City of Sunnyvale has unilateral decision-making on this intersection. Explain that in two years, Council will review

- this and may choose to reverse what they approved.
- Two years after installation, City of Sunnyvale is to review the left-hand turn and will have the option to remove it should traffic issues arise. Staff to monitor traffic levels in Birdland and report back to Council during their two year review.

VOTE: 6-1 (Councilmember Whittum dissented)

Councilmember Chu inquired as to what happened to the funds identified for traffic mitigation impacts for this project. Councilmember Chu stated this direction is identified on page 4 and 5 of Attachment C, contained in the staff report. Councilmember Chu requested the city manager report back to Council through an information item as to if the funding is still available or if it has been used.

Mayor Spitaleri called for a recess at 9:50 pm

Mayor Spitaleri reconvened the Council meeting at 10:02 p.m.

3. **RTC 09–150 Public Hearing - 2008-1259 - M Design Group [Applicant]
Muhammed Irfan Et Al [Owner]: Appeal by the Applicant of a
decision of the Planning Commission of an Application for related
proposals located at 585 Old San Francisco Road (near S Fair Oaks
Ave) in an R-3/PD (Medium-Density Residential/Planned
Development) Zoning District.**
- **Special Development Permit to allow 6 new townhomes;**
 - **Tentative Parcel Map to subdivide one lot into 6 condominium
lots and 1 common lot;**
 - **Variance to allow individual solid waste bin carts.**

Planning Officer Trudi Ryan presented the staff report.

Councilmember Swegles inquired as to whether anything had been done to alleviate concerns of the Planning Commission over the size of this project and Planning Officer Ryan responded that the architecture was not modified; however, an alternate plan has been prepared by the applicant for Council's consideration. Councilmember Swegles verified with Planning Officer Ryan that the applicant's original proposed plan and what they would like to see approved and is the same plan that the Planning Commission had concerns with.

Councilmember Hamilton disclosed she previously met with the applicant. Councilmember Hamilton discussed location of fencing and privacy issues with Planning Officer Ryan. Planning Officer Ryan explained the proposed plan has a gap between the walkway and the eight-foot wall where landscaping could be planted. Staff has recommended that fast growing shrubbery be planted to minimize any view into the area.

Councilmember Whittum stated the driveway is planned for 14 feet; however, 18 feet is required and questioned the consequences of a narrower driveway. Planning Officer Ryan explained that it would make it more difficult for one vehicle to come in when one is leaving; however, staff did not feel that situation would occur very frequently with only six units at this location.

Councilmember Whittum disclosed he previously met with the applicant and architect.

Councilmember Whittum inquired as to why the entire project was not lowered by three feet, seven inches. Planning Officer Ryan responded that in order to get the appropriate slope, the building would have to be smaller and set back further in order for the building to be lowered. The building already has a deviation for a five-foot set back in the rear.

Councilmember Whittum verified with Planning Officer Ryan that the staff report acknowledges the project will have some affect on privacy with the adjoining properties; however, staff does not feel it will be significant.

Vice Mayor Moylan disclosed he met with the applicant's architects who are also his architects. Vice Mayor Moylan stated he discussed this issue with the city attorney and was advised this would not be a conflict of interest.

Councilmember Chu disclosed he met with the architects.

Councilmember Chu verified with Planning Officer Ryan that the fence between the proposed project and the neighboring residences is eight feet high. Councilmember Chu verified with Planning Officer Ryan that the primary concern over privacy is due to the elevated walkway of the proposed project.

Councilmember Chu verified with Planning Officer Ryan that although the driveway apron is reduced to 14 feet, once through the driveway, the underground parking has a full back up area of 24 feet available.

Councilmember Chu verified with Planning Officer Ryan that the proposed development does not technically meet the definition of a townhouse due to the underground parking. Councilmember Chu verified with Planning Officer Ryan that the proposed development has a maximum height of 30 feet. Councilmember Chu and Planning Officer Ryan discussed the surrounding building heights with some developments having higher heights and some lower than the proposed project.

Councilmember Howe inquired why the Planning Commission turned this project down and did not instead issue modified conditions of approval as they have done frequently in the past. Planning Officer Ryan responded the Planning Commission was concerned about the size of the development and privacy impacts.

Mayor Spitaleri disclosed he met with the project architect. Mayor Spitaleri verified with Planning Officer Ryan the walkway is in place for emergency egress from the building in case of emergency and would not be used on a daily basis. Planning Officer Ryan explained as a condition of approval, that area would be locked, so as not to be used on a regular basis. The area would be locked from coming in but would allow free access out.

Public Hearing opened at 10:23 p.m.

Chip Jessup, architect for the project from M Designs, explained they are appealing the Planning Commission decision and seeking approval for a special development permit with noted conditions from staff; approval of the tentative parcel map, and approval of a variance for individual trash cans in place of centralized trash enclosures. Jessup stated they are also asking for three minor deviations. Jessup spoke about the proposed project and reasons why the project fits into the area. Jessup responded to concerns over property values and stated this project would be an improvement to the area.

Malika Junaid, representing the applicant, spoke about the green aspects of the projects.

Jessup stated they have addressed concerns from the residents in the area. Jessup explained that the area is zoned R-3 which allows for six units and the yards are actually larger than the zoning requires which will make these units more attractive to buyers. Jessup stated they do have an alternate plan that could be used if requested. Jessup stated they have provided more parking than what is required.

Councilmember Whittum verified with Jessup that if the yards had been on the west side, there would be a smaller separation between the project and neighboring unit, less than 20 feet as opposed to the 40 feet separation they currently have.

Councilmember Whittum inquired why a more open style of fencing was chosen as opposed to a full masonry wall. Jessup responded that they were concerned that a masonry wall would resemble a fortress wall; whereas, the proposed foliage offers depth and more of a residential feel.

Councilmember Hamilton verified with Jessup that the three options for the eastern boundary are to have a walkway; install light wells, or extend yards all the way to the property line. Councilmember Hamilton verified with Jessup that the applicant's preference would be to have a walkway because it offers privacy for both parcels and provides emergency service access.

Planning Officer Ryan stated her understanding of the walkway was to provide emergency access for the residents. Councilmember Hamilton verified with Planning Officer Ryan that the neighboring condominium units have direct access from their units to their driveways during an emergency.

Councilmember Chu verified with Planning Officer Ryan that the lot coverage for the proposed project meet the zoning code because the code allows for an additional one percent lot coverage if solar collectors are provided, which the applicant has committed to since the Planning Commission meeting.

Councilmember Swegles expressed concern that the building needs to be completely funded so as not to have an empty building sitting due to a funding issue. Jessup stated his understanding is that there is funding for the project; however, he is not able to speak for the owners.

Dayna Wu stated she lives at Blackwood Terrace, which is the building next to the proposed project. Wu expressed concerns over privacy issues; extending yards; driveway size, and the eight-foot fencing. Wu requested Council deny the appeal and uphold the Planning Commission's decision.

Councilmember Chu explained a green barrier could be placed higher than the fencing and questioned if Wu would support that change. Wu explained the height difference is a concern; however if the project was built at the same level as her townhome, she would not have an issue with the project. Councilmember Chu inquired about the alternative open light well and Wu responded that she still has concerns about safety and maintenance of the fence.

Councilmember Hamilton verified with Wu that her living room is on the ground level of her townhome.

Garrison Wu provided handouts of the area and views of his neighboring condominium. Wu stated he is opposed to the proposed project. Wu questioned if density allotment should be maximized for this project due to the narrow lot area. Wu requested Council reject this proposal and look for a less congested design for the area.

Marjorie Lane, resident of Blackwood Lane, stated she supports the Planning Commission's rejection of this project. Lane expressed her concerns with the project.

Andrew Mangogna, resident of Fair Oaks Villas, which is located to the east of the proposed project, stated the proposed project is erroneously intrusive on its environment. Mangogna explained that six units on this lot is too many and imposes on the surroundings. Mangogna expressed concern over parking for delivery trucks. Mangogna explained if the unit was smaller, it would have been approved. Mangogna requested Council deny the appeal.

Harriet Rowe, Planning Commission Chair, speaking on her own behalf, discussed her concern over the applicant's April 21, 2009 letter which identified issues with the Planning Commission. Rowe spoke about the Planning Commission meeting regarding this project. Rowe explained that the applicant's letter stated that the Planning Commission was biased during about this project.

Councilmember Howe inquired why the Planning Commission rejected the project without submitting a modification to the conditions of approval or submitting a recommendation and Rowe responded that there did not appear to be any flexibility from the applicant. The commission's main concern was over the privacy issues; architecture, and number of units. Rowe stated she could not make a motion as the chair and the other members may have felt that there were too many things wrong to attempt to correct the project and would have preferred the applicant redesign the project.

Mayor Spitaleri verified with City Attorney David Kahn that the Chair of the commission is able to make a motion.

Brandon Sulser, member of the Planning Commission, stated he liked the project and architecture; however, his main concern was about privacy. Sulser stated he could not figure out how to get over the privacy concerns and if he could have figured something out, he would have made a motion.

Jessup offered closing statements in support of the proposed project. Jessup stated the only non-negotiable item was the number of units; therefore, he is surprised by the comments from the Planning Commission.

Councilmember Chu verified with Junaid that if a light well was installed, the fence on the inside of the light well would be approximately seven feet high with cable wires above it. Councilmember Chu inquired if the light wells were installed, could the driveway be widened since the walkway would not need to be as wide. Junaid responded that if needed, they could widen the driveway by two feet.

Public Hearing closed at 11:15 p.m.

Vice Mayor Moylan inquired whether the units in this project are considered to be townhouses for which owners of the units own the property and the area underneath the properties. Planning Officer Ryan stated she is not viewing the tentative map and is not able to comment; however, the affirmative response from the audience to Vice Mayor Moylan's question came from the applicant. Vice Mayor Moylan verified with Planning Officer Ryan that the definition of a townhouse is defined differently between the real estate world and the City's zoning code.

Vice Mayor Moylan requested the city manager return to Council as to how to accomplish having the zoning code match the real estate world of definitions for items such as townhouses. Vice Mayor Moylan explained it is important to correct this as it is confusing, especially to applicants and can have a real impact on some projects. Director of Community Development Hanson Hom responded that staff will return to Council with direction as to whether this could be a technical direction brought forward to Council or whether it will need to become a study issue. Councilmember Chu stated if this issue needs to be a study issue, he will second the request.

MOTION: Councilmember Whittum moved to approve Alternative 3: Council denies the appeal and upholds the decision of the Planning Commission thereby, denying the Special Development Permit, Variance, and Tentative Map.

Motion failed for lack of second.

MOTION: Councilmember Howe moved, and Councilmember Swegles seconded, to return this matter to the Planning Commission to produce something that is more compatible with the surrounding neighborhood.

Councilmember Howe stated the Planning Commission has some work to be done on this item.

Councilmember Hamilton stated she opposes the motion because usually items returned to the Planning Commission have huge changes and the only change is that there is an added staff condition. Councilmember Hamilton stated she is in favor of the project and that there are ways to mitigate the privacy concerns, such as what the applicant proposed as an alternative.

Councilmember Whittum stated he does not support the motion. Councilmember Whittum stated the applicant is attempting to use the parcel as it has been zoned for. Councilmember Whittum stated the privacy issues are a concern and it is up to the applicant to come back with a proposal that deals with the privacy impacts. If the project is sent back, guidance should be sent back to the Planning Commission.

Vice Mayor Moylan stated he opposes the motion because he is in favor of granting the appeal. The architecture of this project is an improvement to the projects on either side. The height is in-between the two projects on either side of it; taller than one side and shorter than the other side, which is ideal. Vice Mayor Moylan stated this could be a flagship project for the neighborhood due to the proposed green building that will be used. Vice Mayor Moylan stated the 75 percent criterion is a minimum and six units are well within what can be built at this location.

VOTE: 2-5 (Councilmember Whittum, Vice Mayor Moylan, Mayor Spitaleri, Councilmembers Chu and Hamilton dissented)

Motion failed.

MOTION: Councilmember Hamilton moved and Vice Mayor Moylan seconded the motion to approve Alternative 1: Council grants the appeal and thereby approves the Special Development Permit, Variance, and Tentative Map with the Conditions of Approval **with** the additional conditions of approval for the privacy foliage.

Councilmember Chu offered friendly amendments:

- 1) Widen the driveway by two feet, and
- 2) Change fence on back side of the units from four feet to six feet, with two feet of wire on top for added privacy

Councilmember Hamilton explained that the motion is to approve the project as it is with the walkway, and not with the light wells; therefore the driveway will not be able to be widened.

Councilmember Hamilton did not accept the friendly amendments and would rather the applicant choose to increase the height on their own after discussion with the neighbors.

Councilmember Chu stated he opposes the motion as the light well proposal is a better option.

Vice Mayor Moylan explained that Council has previously raised the height of a wall, after the public comments section was closed, and it became an issue. Modifications to a project should not be proposed after a public hearing has been closed.

Councilmember Hamilton stated her reasoning for recommending the walkway is because it allows for a larger setback for the height of the fence. The light wells would require gates between the yards, which could create an issue between neighbors.

Council Whittum stated he opposes the motion. Councilmember Whittum explained gates that would be installed between yards, if the light well was installed, would be for emergency egress only and would not create issues between neighbors.

Councilmember Whittum offered an amendment to lower the project by one foot.

The amendment failed for lack of a second.

Mayor Spitaleri stated one gate leading into another gate does not assist emergency personnel or residents.

VOTE: 3-4 (Councilmembers Whittum, Swegles, Chu, and Howe dissented)

Motion failed.

MOTION: Councilmember Chu moved to approve Alternative 1: Council grants the appeal and thereby approves the Special Development Permit, Variance, and Tentative Map with the Conditions of Approval

with the requirement to include a light well; the fence at the back yard should be as tall as possible with at least two feet of wire at the top for landscaping, and widen the driveway from 14 to 16 feet.

Motion failed for lack of a second.

MOTION: Councilmember Whittum moved to send the matter back to the Planning Commission with direction to consider reduced density on this site.

Motion failed for lack of a second.

Councilmember Chu explained that he eliminated the stairwell location for privacy issues. The stairwell offers a perceived access, even with a gate, that might invite unwanted visitors into the light well area, which would provide unwanted access to the surrounding units.

MOTION: Vice Mayor Moylan moved, and Councilmember Chu seconded, to approve Alternative 2: Council grants the appeal and thereby approves the Special Development Permit, Variance, and Tentative Map with modified Conditions of Approval

with Council approves the applicant's alternative light well design; widen the driveway as much as can be accomplished, and increase the height of the wall as much as is acceptable to the appellants and the neighbors.

Councilmember Howe offered a friendly amendment to include provision for the appellant and neighbors to discuss the height of the wall with staff and staff will have final decision on the height and design of the wall.

Vice Mayor Moylan accepted the friendly amendment.

Restated MOTION: Vice Mayor Moylan moved and Councilmember Chu seconded the motion to approve Alternative 2: Council grants the appeal and thereby approves the Special Development Permit, Variance, and Tentative Map with modified Conditions of Approval

with Council approves the applicant's alternative light well design; the driveway shall be widened as much as can be accomplished, and the height of the wall will be increased as much as is acceptable to the appellants and neighbors, with the provision that the appellant and neighbors discuss the height of the wall with staff and staff will have final decision on the height and design of the wall.

Councilmember Whittum verified with Planning Officer Ryan that the two feet of landscape buffer will still be included and that the gates will go through the various open space areas and not facing off a walkway.

VOTE: 5-2 (Councilmembers Whittum and Hamilton dissented)

5. RTC 09-151 Channel 26 Public Access Television Programming (Study Issue)

This item was taken out of order, before Item 4 per Mayor Spitaleri's direction in order to accommodate those waiting to speak.

Communications Officer John Pilger presented the staff report and explained that PEG stands for Public, Educational, or Government Broadcasting.

Communications Officer Pilger conducted discussion with Council regarding the staff recommendation and stated that a government access station will provide the greatest variety of programming options. Communications Officer Pilger stated the beginning cost would be approximately \$7,500 a year in staff costs, which would be absorbed by the Communications Department budget. Costs will increase as the programming increases.

Councilmember Swegles verified with Communications Officer Pilger the question of the City carrying meetings from other organizations, and if they would not be carried live, they could be broadcast later without a fee.

Councilmember Swegles verified with Communications Officer Pilger that the control room will be updated to digital technology with PEG funds.

Councilmember Hamilton inquired if the City were to change Channel 26 to a government access channel, what impact would that have on the current producers. Communications Officer Pilger stated if Council is agreeable to allowing public access on the government channel, then the current producers would still have access to air their programs.

Councilmember Hamilton verified with Communications Officer Pilger that it is Council's discretion as to what is run on the government channel and faith-based programming can be included.

Councilmember Hamilton verified with Communications Officer Pilger that it would cost the City approximately \$200 to \$400 per meeting to run any additional meetings on the governmental channel such as the board and commission meetings. Communications Officer Pilger stated staff is not addressing adding other meetings with this study issue; however, moving channel 26 to a government access channel allows the City to have the platform to add other meetings without disturbing the broadcast of the Council or Planning Commission meetings.

Councilmember Hamilton stated the question is whether broadcasting additional meetings would be manageable. Communications Officer Pilger stated staff could return to Council with that information; however, it would depend on the number of other meetings Council wanted to have broadcast.

Councilmember Hamilton inquired how it would be made clear that the City does not endorse what is being broadcast based on the rights for free speech. Communications Officer Pilger stated disclaimers would be used.

Councilmember Whittum disclosed he spoke and met with people at KMVT.

Councilmember Whittum inquired why another government channel is needed as there appears to be a lot of open air time on the current channel. Communications Officer Pilger explained all the different programming that is utilizing the channel.

Councilmember Whittum inquired why the cost is so low and Communications Officer Pilger responded that in the beginning staff would be looking at an addition of approximately 12 hours a month or so. Communications Officer Pilger stated if the programming is expanded to include other meetings, the cost will go up depending on how much Council wishes to add.

Public hearing opened at 12:13 a.m.

Don Yeager stated the City was given \$500,000 when the re-franchise took place and those funds were to be used for equipment upgrades. Yeager stated Council can chose any option they want.

Jeanne Yeager stated public access has been a great opportunity for the community and encouraged Council to keep public access television.

Brian Szabo, Executive Director of KMVT, provided a public access alternative for Channel 26 and stated he had distributed copies of what they can provide to Council. Szabo explained that this would be a tremendous opportunity for the community.

Councilmember Whittum verified with Szabo that KMVT is a non-profit organization.

Councilmember Whittum questioned what the difference would be between having two government channels as opposed to one government and one public access channel. Szabo explained that the idea of a true public access station is that they are totally run without censorship or review, with exception of pornography or violence.

Councilmember Whittum verified with Szabo that there would not be any City staff cost involved with their proposal. Szabo explained that the cost up front would be \$10,000 for equipment and \$25,000 to \$40,000 annually for operating costs. The operating expenses have a broad range because they would be based on what was requested.

Councilmember Whittum verified with Szabo that KMVT would also offer many types of educational classes for the community for a small fee.

Vice Mayor Moylan verified with Communications Officer Pilger that the decision before Council this evening is how to designate Channel 26 and what qualifications to define for a producer, and not to entertain bids from producers.

Councilmember Chu stated there are additional exclusions to public access programming. Szabo stated only commercial programming is restricted.

Pat Kapowich stated he does not recommend doing away with Channel 26. Kapowich stated because of the condition of the City's equipment, many programs he has submitted have not aired. Kapowich suggested Council consider charging a membership fee for access.

Councilmember Whittum inquired why the City's equipment has not been replaced if it is breaking down and Communications Officer Pilger responded Council previously mandated no expenditures for Channel 26. Communications Officer Pilger stated staff anticipates the rebuild of the control room will increase the capacity on both channels. Councilmember Whittum inquired if the PEG account has enough funds for the rebuild of the control room and Communications Officer Pilger responded that staff anticipates it will be enough, but will not know for sure until the consultant is finished and bids are received.

Nick Szebo from Cupertino, stated a public access channel is an important feature for a city. Szebo urged Council to broadcast through KMVT.

Andrea Dorey requested Council utilize the current public access channels. Dorey stated she is in favor of the City taking up KMVT on their offer.

Steve Chessin stated he supports maintaining Channel 26 as a public access channel with expanded programming. Chessin stated his support for KMVT's proposal and recommended rejecting staff's proposal.

Clare Mullin requested Council approve public access programming and allow expanded programming such as her programs that were previously denied.

Councilmember Whittum verified with Mullin her program was denied to run on public access two years ago, as she was told the channel was for government programs only.

Windsor Smith, producer, stated he was denied access by the City several years ago for running his program on Channel 26. Smith stated he supports KMVT.

Councilmember Whittum verified with Smith that he was told at the time that the City was only running programs which had already been accepted by the City of Cupertino

Assistant City Manager Robert Walker clarified that when the program started in 2002, it was to run as a pilot program for a year and then Council was to consider next steps; however, that never occurred. The reason the study issue was put together is because staff is following an old Council policy that does not offer staff any criteria as to whether a new producer can air or not.

Bobbie Chastain requested Council designate Channel 26 as a public access station and stated he is in favor of it being facilitated by KMVT. Chastain stated it is problematic for government and public access channels to be combined.

Robin Frank stated he supports having a public access station with expanded programming.

Trudy Frank stated she is in favor of a public access station.

Arthur Schwartz urged Council to turn Channel 26 over to a non-profit organization to run a true public access channel. Schwartz stated the number of speakers at this late hour indicates how important this subject is to the community.

Public Hearing closed at 12:58 p.m.

MOTION: Councilmember Whittum moved to direct staff to pursue public access on Channel 26 and return with a proposal or proposals from independent non-profits and requests for funding.

Motion failed for lack of a second.

MOTION: Councilmember Hamilton moved and Councilmember Whittum seconded to direct staff to perform a cost analysis for turning the channel into a public access channel run by the City.

Councilmember Hamilton stated she supports public access, but she has some concerns regarding programming on a city-sponsored and paid for station, which may not serve the City's best interest. Councilmember Hamilton stated she is not ready to make a decision until more information is gathered.

Councilmember Chu requested more information regarding what is possible to have as programming.

Vice Mayor Moylan explained that staff is asking Council to create a policy which would allow more producers on the air and the staff recommendation, Alternative 1, would allow that to happen. Vice Mayor Moylan explained that if a government channel is approved, both government and public access programming can be shown; whereas, public access will not allow government programming. Vice Mayor Moylan stated he supports Alternative 1 with Attachment A (with removal of the requirement to be non-political). Councilmember Swegles stated he agrees with Vice Mayor Moylan and that the decision should be made this evening.

Councilmember Hamilton verified with Communications Officer Pilger that the upgrade to the control room will be started once the final input from the consultant has been received, which is expected to be completed this calendar year. Councilmember Hamilton verified with Communications Officer Pilger that some enhanced programming could occur prior to the upgrade.

VOTE: 2-5 (Councilmember Swegles, Vice Mayor Moylan, Mayor Spitaleri, Councilmembers Chu and Howe dissented)

Motion failed.

MOTION: Vice Mayor Moylan moved and Councilmember Swegles seconded the motion to approve Alternative 1 and Producer Qualifications B:

Alternative 1: Council designates Channel 26 as a government access station with a focus on City, other government agency programming; satellite-fed programming and such other content as may be available and appropriate.

Producer Qualifications B:

Council approves Attachment "A" qualifications with modifications **with** direction to remove "is non-political" from Attachment A.

Councilmember Whittum verified with Communications Officer Pilger that if the City were to give up Channel 26, there is not much chance of getting that station back.

Councilmember Whittum verified with Communications Officer Pilger that once the equipment is upgraded, the City will have the ability to run more programs.

Communications Officer Pilger stated if the channel is designated as government access, it would not be 100 percent public access; however, many of the programs mentioned this evening by the speakers have a good chance being part of the programming.

Councilmember Whittum inquired as part of the staff recommendation, who would decide what will be shown. Communications Officer Pilger stated the decision would be governed by the city manager as an operational item; however, Council could direct otherwise.

Councilmember Whittum stated he will oppose the motion.

Councilmember Hamilton stated she will oppose the motion as there is a strong argument for public access. Councilmember Hamilton stated with government access, the issues are that the City will be able to pick and chose what is shown, which is not really free speech and the other issue is the City should not feel pressured to air programming just because it represents the City's point of view. She stated it is hard to mix free speech items with board and commission meetings.

VOTE: 5-2 (Councilmembers Whittum and Hamilton dissented)

4. RTC 09-149 Board and Commission Appointments (Based on 2009 Summer Recruitment)

Councilmember Swegles announced he would be abstaining from voting on all applicants with whom he was not able to participate in the interviews.

Councilmember Hamilton stated she missed part of the second round of interviews but she spoke to her colleagues about the applicants and will cast her vote. However, she will abstain from voting on the applicants who were not interviewed by the Council as they were late applications.

City Clerk Kathleen Franco Simmons presented the staff report.

Councilmember Chu verified with the city clerk that the order of voting will follow what was requested by Vice Mayor Moylan. Applicants must receive four affirmative votes to be appointed.

Board of Building Code Appeals (4 vacancies)

1 term to 6/30/2011
2 terms to 6/30/2012
1 term to 6/30/2013

David Musgrave
VOTE: 7 -0

City Clerk Kathleen Franco Simmons announced David Musgrave has been appointed to the Board of Building Code Appeals with a term expiring June 30, 2013.

Heritage Preservation Commission (2 vacancies)

1 term to 6/30/2010
1 term to 6/30/2013

Amrit Verma
VOTE: 5-0 (Councilmember Whittum and Vice Mayor Moylan abstained)

City Clerk Franco Simmons announced Amrit Verma has been appointed to the Heritage Preservation Commission with a term expiring June 30, 2013.

Bicycle and Pedestrian Advisory Commission (1 vacancy, Category 2)

1 term to 6/30/2010

Carl Bergholm
VOTE: 1-0 (Councilmembers Whittum and Swegles, Vice Mayor Moylan, Mayor Spitaleri, Councilmembers Chu, and Howe abstained)

Angela Rausch
VOTE: 1-0 (Councilmembers Whittum and Swegles, Mayor Spitaleri, Councilmembers Chu, Howe, and Hamilton abstained)

Garry Sellers
VOTE: 1-0 (Councilmembers Whittum and Swegles, Vice Mayor Moylan, Mayor Spitaleri, Councilmembers Chu, and Hamilton abstained)

Cathy Switzer
VOTE: 5-0 (Councilmembers Swegles and Howe abstained)

Cyndi Wheeler
VOTE: 3-0 (Vice Mayor Moylan, Mayor Spitaleri, Councilmembers Chu, and Hamilton abstained)

Kristin Yiotis

VOTE: 1-0 (Councilmembers Whittum and Swegles, Vice Mayor Moylan, Mayor Spitaleri, Councilmembers Howe and Hamilton abstained)

City Clerk Franco Simmons announced Cathy Switzer has been appointed to the Bicycle and Pedestrian Advisory Commission with a term expiring June 30, 2010.

Personnel Board (1 vacancy)

1 term to 6/30/2013

Eric Anderson

VOTE: 3-0 (Councilmember Swegles, Vice Mayor Moylan, Mayor Spitaleri, Councilmember Chu abstained)

Garry Sellers

VOTE: 5-0 (Swegles and Hamilton abstained)

Cathy Switzer was not voted upon for this board as she was previously appointed to a commission.

City Clerk Franco Simmons announced Garry Sellers has been appointed to the Personnel Board with a term expiring June 30, 2013.

Parks and Recreation Commission (2 vacancies)

2 terms to 6/30/2013

Amitabh Bihari

VOTE: 1-0 (Councilmembers Whittum and Swegles, Vice Mayor Moylan, Mayor Spitaleri, Councilmembers Chu and Howe abstained)

Ralph Kenton

VOTE: 4-0 (Councilmembers Whittum, Chu and Howe abstained)

Councilmember Swegles left the dais.

Bob Kinder

VOTE: 3-0 (Councilmember Whittum, Vice Mayor Moylan, and Mayor Spitaleri abstained, Councilmember Swegles absent)

Mike Michitaka

VOTE: 1-0 (Vice Mayor Moylan, Mayor Spitaleri, Councilmembers Chu, Howe, and Hamilton abstained, Councilmember Swegles absent)

Councilmember Swegles returned to the dais

Richard Oliver

VOTE: 5-0 (Councilmember Swegles and Vice Mayor Moylan abstained)

Craig Pasqua

VOTE: 3-0 (Councilmember Swegles, Mayor Spitaleri, Councilmembers Chu, and Howe abstained)

Robert Pochowski

VOTE: 4-0 (Vice Mayor Moylan, Mayor Spitaleri and Councilmember Hamilton abstained)

Cathy Switzer was not voted upon for this board as she was previously appointed to a commission.

City Clerk Franco Simmons announced Richard Oliver has been appointed to the Parks and Recreation Commission with a term expiring June 30, 2013.

Due to a tie vote between Ralph Kenton and Robert Pochowski, a re-vote was taken.

Ralph Kenton

VOTE: 2-0 (Councilmember Whittum, Mayor Spitaleri, Councilmembers Chu, Howe, and Hamilton abstained)

Robert Pochowski

VOTE: 5-0 (Councilmember Swegles and Vice Mayor Moylan abstained)

City Clerk Franco Simmons announced Robert Pochowski has been appointed to the Parks and Recreation Commission with a term expiring June 30, 2013.

Planning Commission (1 vacancy)

1 term to 6/30/2013

John Cordes

VOTE: 1-0 (Councilmembers Whittum, Swegles, Vice Mayor Moylan, Mayor Spitaleri, Councilmembers Chu and Hamilton abstained)

Robert Pochowski was not voted upon for this board as he was previously appointed to a commission.

Brandon Sulser

VOTE: 5-0 (Councilmembers Swegles and Howe abstained)

Cathy Switzer was not voted upon for this board as she was previously appointed to a commission.

City Clerk Franco Simmons announced Brandon Sulser has been appointed to the Planning Commission with a term expiring June 30, 2013.

Housing and Human Services Commission (9 vacancies)

2 terms to 6/30/2011

2 terms to 6/30/2012

5 terms to 6/30/2013

Eric Anderson
VOTE: 6-0 (Councilmember Swegles abstained)

Dori Hailu
VOTE: 7-0

Garry Sellers was not voted upon for this commission as he was previously appointed to a board.

Demi Yezgi
VOTE: 6-0 (Councilmember Whittum abstained)

City Clerk Franco Simmons announced Eric Anderson, Dori Hailu, and Demi Yezgi have been appointed to the Housing and Human Services Commission with terms expiring June 30, 2013.

Arts Commission (2 vacancies)
2 terms to 6/30/2013

Amitabh Bihari
VOTE: 2-0 (Councilmember Whittum, Vice Mayor Moylan, Mayor Spitaleri, Councilmembers Chu and Howe abstained)

Amber Estrada
VOTE: 1-0 (Councilmembers Whittum and Swegles, Vice Mayor Moylan, Mayor Spitaleri, Councilmembers Howe and Hamilton abstained)

Noelle Hughes
VOTE: 7-0

Christine Lanoie-Newman
VOTE: 4-0 (Councilmembers Swegles, Chu, and Hamilton abstained)

Tracy Seto
VOTE: 1-0 (Councilmember Swegles, Vice Mayor Moylan, Mayor Spitaleri, Councilmembers Chu, Howe, and Hamilton abstained)

City Clerk Franco Simmons announced Noelle Hughes and Christine Lanoie-Newman have been appointed to the Arts Commission with terms expiring June 30, 2013.

Board of Library Trustees (1 vacancy)
1 term to 6/30/2013

Eric Anderson was not voted upon for this commission as he was previously appointed to a commission.

Dixie Carney
VOTE: 2-0 (Councilmember Swegles, Vice Mayor Moylan, Mayor Spitaleri, Councilmembers Howe, and Hamilton abstained)

Micki Falk

VOTE: 1-3 (Mayor Spitaleri, Councilmembers Howe and Hamilton dissented, and Councilmember Swegles, Vice Mayor Moylan, and Councilmember Chu abstained)

Christine Lanoie-Newman was not voted upon for this commission as she was previously appointed to a commission.

Mei-Ling Stefan

VOTE: 3-0 (Councilmembers Swegles, Chu, Howe, and Hamilton abstained)

City Clerk Franco Simmons announced no appointments were made to the Board of Library Trustees.

Councilmember Hamilton inquired as to what the plan is for future recruitments due to the number of vacancies that are still open. Mayor Spitaleri stated another interview process will be held in six months.

COUNCILMEMBER REPORTS ON ACTIVITIES FROM INTERGOVERNMENTAL COMMITTEE ASSIGNMENTS

None.

NON-AGENDA ITEMS & COMMENTS

COUNCIL: Councilmember Howe requested staff submit to Council a brief history on the Town and Country project including how it is going before the Planning Commission, what steps there are, where it is at and when it is coming before Council.

STAFF: City Attorney Kahn stated he wished to respond to Councilmember Whittum's earlier question as to what would happen if there is no Council vote on an appeal from the Planning Commission. City Attorney Kahn explained that the action from the Planning Commission would stand as the last action on the item, and the appeal would be denied.

INFORMATION ONLY REPORTS/ITEMS

- Tentative Council Meeting Agenda Calendar
- Revised Draft Minutes of the Board of Library Trustees Special Meeting of May 18, 2009

ADJOURNMENT

Mayor Spitaleri adjourned the Council meeting at 1:50 a.m.

Kathleen Franco Simmons
City Clerk

Date